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ILLINOIS REGISTER

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DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

**The Department of Financial and Professional Regulation is posting this proposed amendment in an effort to make the public aware of possible changes that may have an impact on the industry/profession.**

**The general public may submit written comments to the Department during the first 45-day public comment period. Any suggested changes will be considered by the Department and (if applicable) the appropriate Board.**

**This proposed amendment was published in the July 31, 2020 Illinois Register. The 45-day comment period will end September 14, 2020.**

**Please submit written comments to Craig Cellini as stated in the attached notice.**

**THESE PROPOSED CHANGES ARE NOT IN EFFECT AT THIS TIME AND THE ADOPTED RULES MAY DIFFER FROM THOSE ORIGINALLY PUBLISHED.**

- 1) Heading of the Part: Credit Union Act
- 2) Code Citation: 38 Ill. Adm. Code 190
- 3) 

<u>Section Number:</u> 190.140	<u>Proposed Action:</u> Amendment
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- 4) Statutory Authority: Implementing and authorized by the Illinois Credit Union Act [205 ILCS 305]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking amends Section 190.140 of the rules (Real Estate Lending) by increasing the residential appraisal threshold from \$250,000 to \$400,000. The rulemaking also permits a credit union to temporarily defer certain appraisals and written estimates of market value for up to 120 days after closing when other alternatives are not available and when the appraisal or evaluation would delay the closing of the residential or commercial real estate loan transaction. The rule covers all real estate related transactions except those involving acquisition, development, and construction real estate loans.

The National Credit Union Administration (NCUA) made substantially similar changes to its appraisal regulation in April 2020. Pursuant to [205 ILCS 305/65], the Department is required to adopt rules and regulations in substantial conformity with those promulgated

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by the NCUA under the Federal Credit Union Act. Additionally, other federal agencies such as the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation have adopted substantially similar rules.

- 6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking, in accordance with 1 Ill. Adm. Code 100.355: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

Interested persons may submit written comments to:

Department of Financial and Professional Regulation  
Attention: Craig Cellini  
320 West Washington, 2nd Floor  
Springfield, IL 62786

217/785-0813  
Fax: 217/557-4451

All written comments received within 45 days after this issue of the Illinois Register will be considered.

- 13) Initial Regulatory Flexibility Analysis:

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- A) Types of small businesses, small municipalities and not for profit corporations affected: State-chartered Credit Unions would be affected.
  - B) Reporting, bookkeeping or other procedures required for compliance: No new requirements are contained in this amendment.
  - C) Types of professional skills necessary for compliance: None.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:  
54 – professional, scientific and technical services
  - B) Categories that the agency reasonably believes the rulemaking will impact, including:  
ii – regulatory requirements
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2020

The full text of the Proposed Amendment begins on the next page:

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TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 190

ILLINOIS CREDIT UNION ACT

SUBPART A: GENERAL PROVISIONS

Section

190.2	Definitions
190.5	Credit Union Service Organizations
190.10	Field of Membership Procedures
190.15	Civil Penalty
190.20	Hearings
190.25	Regulatory Examination Consistency and Due Process
190.30	Cease and Desist Procedures
190.40	Removal or Suspension Procedures
190.50	Fees
190.60	General Accounting Procedures
190.70	Loan Loss Accounting Procedures
190.80	Use of Electronic Data Processing
190.90	Fixed Asset Investments
190.100	Classes of Share and Special Purpose Share Accounts
190.110	Share Drafts
190.120	Bond and Insurance Requirements
190.130	Verification of Share and Loan Accounts
190.140	Real Estate Lending
190.150	Reverse Mortgage (Repealed)
190.160	Lending Limits – Consumer Loans
190.165	Business Loans
190.170	Group Purchasing
190.180	Investments
190.185	Investment in "Other Financial Institutions"
190.190	Liquidation
190.200	Conversion of Charter
190.210	Reimbursement for Financial Records
190.220	Registration of Out of State Credit Unions

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SUBPART B: HIGH RISK HOME LOANS

Section	
190.500	Definitions (Repealed)
190.505	Applicability of Rule (Repealed)
190.510	Good Faith Requirements (Repealed)
190.515	Fraudulent or Deceptive Practices (Repealed)
190.520	Prohibited Refinances (Repealed)
190.525	Negative Amortization (Repealed)
190.530	Negative Equity (Repealed)
190.535	Balloon Payments (Repealed)
190.540	Financing of Certain Points and Fees (Repealed)
190.545	Financing of Single Premium Insurance Products (Repealed)
190.550	Lending Without Due Regard to Ability to Repay (Repealed)
190.555	Verification of Ability to Repay (Repealed)
190.560	Payments to Contractors (Repealed)
190.565	Counseling Prior to Perfecting Foreclosure (Repealed)
190.570	Mortgage Awareness Program (Repealed)
190.575	Offer of Mortgage Awareness Program (Repealed)
190.580	Third Party Review (Repealed)

SUBPART C: PAYDAY LOANS

Section	
190.600	Definitions
190.601	Purpose and Scope
190.605	Applicability of Rule
190.610	Issuance of Payday Loans by Credit Unions

190.APPENDIX A	Estimated Monthly Income and Expenses Worksheet (Repealed)
190.APPENDIX B	Mortgage Ratio Worksheet (Repealed)

AUTHORITY: Implementing and authorized by the Illinois Credit Union Act [205 ILCS 305].

SOURCE: Adopted at 4 Ill. Reg. 20, p. 17, effective May 7, 1980; amended at 6 Ill. Reg. 11154, effective September 7, 1982; amended and codified at 7 Ill. Reg. 14973, effective October 26, 1983; emergency amendment at 9 Ill. Reg. 14378, effective September 11, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 16231, effective October 10, 1985; amended at 10 Ill. Reg.

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14667, effective August 27, 1986; amended at 12 Ill. Reg. 10464, effective June 7, 1988; amended at 12 Ill. Reg. 17383, effective October 24, 1988; amended at 13 Ill. Reg. 3793, effective March 10, 1989; amended at 13 Ill. Reg. 15998, effective October 2, 1989; emergency amendment at 16 Ill. Reg. 12781, effective July 29, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 17073, effective October 26, 1992; amended at 19 Ill. Reg. 2826, effective February 24, 1995; amended at 20 Ill. Reg. 5803, effective April 8, 1996; emergency amendment at 20 Ill. Reg. 13093, effective September 27, 1996, for a maximum of 150 days; emergency expired February 17, 1997; amended at 22 Ill. Reg. 17317, effective September 15, 1998; emergency amendment at 23 Ill. Reg. 3086, effective February 23, 1999, for a maximum of 150 days; emergency expired July 22, 1999; amended at 23 Ill. Reg. 12614, effective October 4, 1999; amended at 23 Ill. Reg. 14031, effective November 12, 1999; amended at 25 Ill. Reg. 6244, effective May 17, 2001; amended at 25 Ill. Reg. 13278, effective October 19, 2001; amended at 26 Ill. Reg. 17999, effective December 9, 2002; amended at 28 Ill. Reg. 11699, effective July 29, 2004; amended at 29 Ill. Reg. 10579, effective July 8, 2005; amended at 30 Ill. Reg. 18919, effective December 4, 2006; amended at 32 Ill. Reg. 1377, effective January 16, 2008; amended at 34 Ill. Reg. 10500, effective July 12, 2010; amended at 37 Ill. Reg. 12450, effective July 16, 2013; amended at 38 Ill. Reg. 19910, effective October 17, 2014; amended at 41 Ill. Reg. 4764, effective May 1, 2017; amended at 41 Ill. Reg. 11307, effective August 28, 2017; amended at 43 Ill. Reg. 303, effective January 1, 2019; amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

-SUBPART A: GENERAL PROVISIONS

**Section 190.140 Real Estate Lending**

- a) A credit union with total assets greater than \$1 million may, following a resolution of its board, make loans secured by a lien on real estate, including an assignment of a beneficial interest in a land trust, subject to the following procedures:

Total Assets of a Credit Union	Maximum Amount of Loans Secured by Real Estate	Aggregate of All First Mortgage Loans Secured by Real Estate
Under \$1 million	Lending Limits for Consumer Loans	0% of total assets
\$1 - 2.5 million	\$165,000*	25% of total assets
\$2.5 - 5 million	\$250,000*	30% of total assets
\$5 - 10 million	\$330,000	35% of total assets

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\$10 - 30 million	\$580,000	40% of total assets
\$30 - 100 million	\$825,000	45% of total assets
Over \$100 million	\$1,000,000	50% of total assets

\* The aggregate loans to one member may not exceed the aggregate limit referenced in subsection (e).

- b) Credit unions with assets under \$1 million may make home equity and second mortgage loans subject to the lending limits for consumer loans set forth in Section 190.160. Credit unions with assets under \$1 million shall not make first mortgage real estate loans.
- c) Credit unions shall not make first mortgage real estate loans for more than the estimated market value or appraised value of the real estate securing the loans. Real estate loans, other than first mortgage loans, shall be limited to the value of the member-borrower's equity in the real estate securing the loan, provided a credit union may consider as equity any outstanding loan amount secured by the real estate if the outstanding loan will be repaid with the proceeds of the credit union's loan.
- d) The maximum individual lending limit and the maximum ratio of first mortgage real estate loans may be increased by obtaining written approval from the Secretary. Approval is to be based upon the need of the members and the credit union's real estate lending record.
- e) The maximum limit on an individual loan by credit unions with assets greater than \$1 million is in addition to the secured and unsecured lending limits of Section 190.160; provided, however, in no event shall all loans to any member exceed in the aggregate 10% of the credit union's unimpaired capital and surplus as defined in Section 190.2. Loans subject to the requirements for business loans shall be subject to the appraisal requirements set forth in subsection (h), but shall not be subject to the other provisions of this Section.
- f) The maximum maturity of a loan secured by a first mortgage shall not exceed 40 years.
- g) Procedures

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- 1) All loans secured by a lien on real estate shall be made based upon prudent written lending policies and sound lending practices as documented in each member's loan file. Unless waived by the Secretary, lending policies shall include, without limitation, acceptable debt-to-income and loan-to-value ratios that will be considered the types of real estate security that will be accepted and any other prudent data considered necessary to determine the appropriateness of a loan request. All applicable Illinois and federal statutes shall be observed.
  - 2) All accounting for real estate loan transactions shall be in accordance with GAAP.
- h) Documentation
- 1) Any credit union granting loans secured by a lien in real estate must procure and retain the following documentation in its files:
    - A) A loan application that specifies the purpose of the loan (equity, purchase, construction, refinance, etc.). The application must contain sufficient information to support the approval of the loan. The information shall include without limitation: the amount of the loan requested; the purchase price (if applicable); a listing of the borrower's assets and liabilities; a statement of the borrower's income; a specific identification of the property; and an explanation of the source of the borrower's down payment. If the loan proceeds will be used for the purchase of the property, a copy of the real estate sale contract shall be included as an attachment to the application.
    - B) A legal opinion from the credit union's attorney, or a title insurance policy that identifies the credit union's lien position on the property used to secure the loan. In the case of home equity lines of credit, second mortgages, and non-purchase money first mortgage transactions, a title search prepared by a service provider capable of conducting a search shall be acceptable.
    - C) For transactions of ~~\$400,000~~\$250,000 or less, a written estimate of market value of the property securing the loan, performed by an



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individual having no direct or indirect interest in the property and experienced to perform estimations of value for the type and amount of credit being considered. For transactions over ~~\$400,000~~\$250,000, an appraisal by a state certified or licensed appraiser that estimates the market value of the property used as security for the loan.

- D) A credit report prepared by the credit union or a credit reporting agency. The report, in conjunction with the information contained in subsection (h)(1)(A), must demonstrate the applicant's past history of repayment and ability to repay the loan in question.
- E) A duly executed note and mortgage agreement that outline the borrower's agreement to repay the loan on the terms agreed, and the borrower's agreement to provide the credit union with a valid security interest in the subject property. The mortgage agreement must contain an accurate legal description of the subject property and be duly recorded in the office of the appropriate county recorder of deeds.
- F) A settlement statement reflecting all costs of closing and all disbursements of funds at closing for real estate loans that require the use of a settlement statement under the federal Real Estate Settlement Procedures Act (RESPA) (12 USC 2601).
- G) On any loan for which the lesser of the loan-to-value ratio or loan-to-purchase price ratio exceeds 80%, the credit union may require the borrower to obtain private mortgage insurance insuring the excess of the loan above the 80% factor.
- H) In the event the subject loan is to be used for the construction of a residential dwelling that is or will be the principal residence of the member-borrower and the loan will be secured by a perfected first lien or first security interest in favor of the credit union, the credit union must obtain satisfactory evidence of the payment in full of the costs of furnishing labor and material in connection with the construction. The evidence shall include receipt of an owner's statement, under oath, setting forth the names of all parties with

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whom the owner has contracted for the furnishing of labor and material; a general contractor's sworn statement from each of the parties named in the owner's statement; a subcontractor's sworn statement from each subcontractor named in the general contractor's statement; and partial and final unconditional lien waivers from the general contractor and all subcontractors and materialmen indicating that they have completed their respective portion of the work and been paid in full. The credit union must inspect, or cause to be inspected by a third party, the completion of each phase of the work for which an advance of any portion of the loan proceeds is sought. Any such inspections must be clearly documented in the file as to the date of the inspection and a brief explanation of the work progression. Additionally, the credit union must obtain a borrower payment authorization, in connection with each payment to the general contractor. This subsection (h)(1)(H) shall not apply to a loan to finance the repair, alteration or improvement of a residential dwelling which is the residence of the member-borrower.

- 2) A loan secured by a lien on real estate is exempt from the requirements of subsections (h)(1)(B), (C) and (G) of this Section if the loan complies with the following criteria:
  - A) The loan is not used for the purchase or refinancing of the real estate securing the loan.
  - B) The lien on real estate is taken as collateral solely through an abundance of caution.
  - C) The terms of the transaction are not more favorable than they would have been in the absence of the lien on real estate.
  - D) The transaction complies with the lending limits and other requirements for consumer loans set forth in Section 190.160.
- 3) The completion of appraisals or written estimate of market value required under subsection (h)(1)(c), may be deferred up to 120 days from the date of closing. The deferrals authorized under this subsection (h)(3) apply to

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all residential and commercial real estate-secured transactions, excluding transactions for acquisition, development, and construction of real estate. The deferrals of appraisals or written estimates of market value authorized under subsection (h)(3) only applies to transactions that close on December 31, 2020.

- i) Sale of Real Estate Loans
  - 1) A credit union may sell, in whole or in part, any loan secured by real estate to:
    - A) Federal National Mortgage Association (FNMA).
    - B) Government National Mortgage Association.
    - C) Federal Home Loan Mortgage Corporation.
    - D) The Federal Home Loan Bank of the Federal Home Loan Bank System district in which the credit union is located.
    - E) Federal, Illinois and Local Housing Authorities.
    - F) Credit Unions, Banks, Savings Banks and Savings and Loan Associations chartered under the laws of the United States, the State of Illinois or any other state.
    - G) Residential mortgage licensees properly registered with and licensed by the Department of Financial and Professional Regulation-Division of Banking.
    - H) Other institutions approved by the Secretary.
  - 2) All such sales shall not be subject to recourse or repurchase that enables the credit union to retain control over the transferred assets. The credit union shall have surrendered control over the transferred assets if:
    - A) The transferred assets have been put presumptively beyond the reach of the credit union transferring the assets and its creditors;

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- B) The purchaser has the right to pledge or exchange the assets; and
  - C) The credit union does not maintain effective control over the transferred assets through an agreement that both entitles and obligates the credit union to repurchase the assets before their maturity.
- 3) A limited recourse provision in a sale agreement that obligates the credit union transferring assets to purchase the assets because of breach of warranty or misrepresentation shall be considered a sale.

(Source: Amended at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)